

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

DANIEL LOVELACE and
HELEN LOVELACE, Individually, and as Parents of
BRETT LOVELACE, deceased,

Plaintiffs,

VS.

NO.: 2:13-cv-02289 dkv
JURY TRIAL DEMANDED

PEDIATRIC ANESTHESIOLOGISTS, P.A.;
BABU RAO PAIDIPALLI ; and,
MARK P. CLEMONS,

Defendants.

**PLAINTIFFS' RESPONSE TO MOTION OF DEFENDANTS, PEDIATRIC
ANESTHESIOLOGISTS, P.A., AND BABU RAO PAIDIPALI (SIC), M.D., TO DISMISS
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
PURSUANT TO F.R.C.P. 12(B)**

COME the Plaintiffs, Daniel Lovelace and Helen Lovelace, individually, and as Parents of Brett Lovelace, deceased, by and through their counsel, who, for their Plaintiffs' Response to Motion of Defendants, Pediatric Anesthesiologists, P.A. and Babu Rao Paidipalli, M.D., to Dismiss For Failure to State a Claim Upon Which Relief Can Be Granted Pursuant To F.R.C.P. 12(b) [D.E. 12], and Memorandum of Law in Support of Defendants, Pediatric Anesthesiologists, P.A., and Babu Rao Paidipalli, M.D., to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted pursuant to F.R.C.P. 12(B) [D.E. 12-1], filed on June 12, 2013, state as follows:

1. The Motion to Dismiss is not properly grounded in law or fact.

2. Plaintiffs complied with pertinent state and federal statutes and regulations including T.C.A. § 29-26-121 and the Health Insurance Portability and Accountability Act (HIPAA) of law, contrary to Defendants' assertions.

3. Plaintiffs rely upon their Plaintiffs' Memorandum Brief in Opposition to Motion of Defendants, Pediatric Anesthesiologists, P.A., and Babu Rao Paidipalli, M.D., to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted Pursuant to F.R.C.P. 12(B) and Memorandum of Law in Support of Same.

4. Defendants rely upon an unconstitutional statute, viz., T.C.A. § 29-26-121, which should be stricken as void.

5. The Attorney General, Robert E. Cooper, Jr., State of Tennessee, is being served with a copy of all relevant pleadings under T.C.A. § 29-14-107 (b). Cummins v. Shipp, 156 Tenn. 595, 38 S.W.2d. 1062 (1928).

WHEREFORE, premises considered, Plaintiffs pray that this Court deny Defendants' Motion to Dismiss.

Respectfully submitted,

HALLIBURTON & LEDBETTER

s/P. Mark Ledbetter

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2013, I electronically filed **Plaintiffs' Response to Motion of Defendants, Pediatric Anesthesiologists, P.A., and Babu Rao Paidipali, M.D., to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted Pursuant to F.R.C.P. 12(B)** with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to The Hardison Law Firm, and the firm of Thomas, Hendrix, Harvey, Johnson & Mitchell. The undersigned hereby certifies that Robert E. Cooper, Jr., Attorney General for the State of Tennessee, has been served by U.S. Mail, postage prepaid, at his address listed below:

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